

1                                   **BEFORE THE SHORELINES HEARINGS BOARD**  
2                                   **STATE OF WASHINGTON**

3   **PORT OF FRIDAY HARBOR    )**  
4   **and LYNNE MERCER,        )**       **SHB NOS. 92-20 & 21**  
5                               **Appellant,            )**  
6                               **v.                        )**       **ORDER DENYING**  
7                               **TOWN OF FRIDAY HARBOR    )**       **RECONSIDERATION**  
8   **and FRIDAY HOUSE        )**  
9   **PARTNERSHIP,             )**  
10                              **Respondents.        )**

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11           On December 29, 1992, after a hearing held on the merits, the Washington State  
12   Shorelines Hearings Board unanimously reversed the Town of Friday Harbor's shoreline  
13   substantial development permit issued to Friday Harbor House Partnership to construct a  
14   sixteen (16) unit lodging facility and restaurant

15           Appellant Friday House Partnership timely requested reconsideration.

16           The Board carefully examined the Petition for Reconsideration, and finds that:

17           1) The appellant seeks to introduce evidence after the record is closed. The proposed  
18   evidence was not, but could have been offered at the hearing. Therefore, it is not an  
19   appropriate basis for reconsideration. However, even if the evidence could be introduced and  
20   considered, it would not change the result, because the Friday Harbor Shoreline Management  
21   Program protects views from public AND private property. The view from the property from  
22   the Raven House site would still be obliterated, if the proposed project was allowed

23           Therefore, it is ORDERED that the Petition is DENIED, and the Board affirms its  
24   December 29, 1992, ORDER TO REVERSE.

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27   ORDER DENYING RECONSIDERATION  
SHB NOS. 92-20 & 21                               (1)

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DONE this 22nd day of January, 1993.

SHORELINES HEARINGS BOARD

Annette S. McGee  
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Chairman

Robert V. Jensen  
ROBERT V. JENSEN, Attorney Member

Nancy Burnett  
NANCY BURNETT, Member

Gordon F. Crandall  
GORDON F. CRANDALL, Member by Jg

S92-20R



1 In approving the development, the Town of Friday Harbor enhanced a public  
2 view area by requiring construction of the staircase and viewpoint in the area of  
3 West Street. However, the Board finds that the total project does obstruct and  
4 significantly reduces the aesthetic quality of current views of the water from  
5 private and public properties

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7 III

8 Line eighteen (18) through twenty (20) of Conclusion XI is to be modified as follows.

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10 The Board finds that the approved project does block public views of the water  
11 from the sidewalk on First Street and from upland properties, as the project as  
12 approved occupies most of the lot. Therefore, the approval of the Shoreline  
13 Substantial Development permit should be reversed.

14 V

15 We have carefully examined the other contentions of the Petition and find them  
16 to be without merit.

17 VI

18 Respondent's exhibit number two (2) and appellant Mercer's exhibit number  
19 nine (9) on file with the Board depict obstruction and significant reduction of water  
20 views. The Board's site visit supports this evidence.

21 VII

22 Therefore, the Board enters the following:  
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**ORDER**

Based on the foregoing, the Board issues a Modified Findings of Fact/Conclusions of Law, and Denies the Motion for Reconsideration.

DONE this 1<sup>st</sup> day of February, 1993.

**SHORELINES HEARINGS BOARD**

  
ANNETTE S. MCGEE, Presiding

  
HAROLD S. ZIMMERMAN, Chairman

  
ROBERT V. JENSEN, Attorney Member

  
NANCY BURNETT, Member

  
GORDON CRANDALL, Member

1                                   **BEFORE THE SHORELINES HEARINGS BOARD**  
2                                   **STATE OF WASHINGTON**

3   **PORT OF FRIDAY HARBOR**                   )  
4   **and LYNNE MERCER,**                    )  
5                                    **Appellants,**                    )  
6                                    **v.**                                    )  
7   **TOWN OF FRIDAY HARBOR and**           )  
8   **FRIDAY HOUSE PARTNERSHIP,**           )  
9                                    **Respondents.**                   )  
10   \_\_\_\_\_)

**SHB No. 92-20 & 21**  
                                  **MODIFIED**  
                                  **FINAL FINDINGS OF FACT,**  
                                  **CONCLUSIONS OF LAW**  
                                  **AND ORDER**

11           This matter came on for hearing before the Washington State Shorelines Hearings  
12   Board, November 4 and 5, 1992, at the San Juan Community Theater in Friday Harbor,  
13   Washington. Present for the Board were Annette S. McGee, Presiding, Chairman Harold S.  
14   Zimmerman, Attorney Board Member Robert V. Jensen, Members Nancy Burnett and  
15   Gordon F. Crandall.

16           At issue is the Town of Friday Harbor's approval of a conditioned Shoreline  
17   Substantial Development Permit Number 51 issued to Friday Harbor House Partnership to  
18   construct a sixteen (16) unit lodging facility and restaurant.

19           Appearances were:

20           Appellant Lynne Mercer, pro se;

21           Appellant Port of Friday Harbor, Attorneys at Law, John Linde and Charles Jackson,

22           Respondent Applicant, Tony Puma, pro se; and

23           Respondent Town of Friday Harbor, City Attorney Donald Eaton.

24           Proceedings were taped and recorded by Lenore E. Elliott, Certified Shorthand  
25   Reporter of Gene Barker and Associates, Inc., Olympia, WA.

26   MODIFIED FINAL FINDINGS OF FACT,  
27   CONCLUSIONS OF LAW AND ORDER  
SHB NO. 92-20 & 21

1           Witnesses were sworn and testified, exhibits examined, and the Board viewed the site  
2 of the proposal in the company of the parties. From the foregoing, the Board makes these  
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#### 4                                   **FINDINGS OF FACT**

##### 5                                   **I**

6           On April 4, 1991, Friday Harbor House Partnership's architect and agent, Alan  
7 Grainger of G.G L.O Architecture and Interior Design, 1008 Western Avenue, Seattle,  
8 Washington, applied to the Town of Friday Harbor for a shoreline permit to construct an Inn  
9 on vacant property at 130 West Street, within Government Lot two of Section 13,  
10 Township 35 North, Range 3 West W.M., in the Town of Friday Harbor, San Juan County,  
11 State of Washington. The exact location is commonly known as the "Gollywobbler  
12 Restaurant" site.

##### 13                                   **II**

14           Friday Harbor House Partnership has an option to purchase the above property for six-  
15 hundred thousand (\$600,000) dollars from Martin Agegian, who is the owner of the site and  
16 the former Gollywobbler Restaurant that burned in 1989. The property has been vacant since  
17 the fire. Exercise of the option is conditioned upon obtaining the appropriate permits for the  
18 project.

##### 19                                   **III**

20           The April application included plans for a three story Inn, with twenty-six (26) guest  
21 rooms, restaurant, manager's apartment, conference facilities, twenty-seven (27) parking  
22 places, public improvements to West Street on the eastern side of the project, and a  
23 one-hundred twelve foot alley which could later be connected to Front Street by other entues  
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2 IV

3 The applicant also filed an Environmental Checklist on April 5, 1991, from which a  
4 Declaration of Non-significance (DNS) was issued by the Town of Friday Harbor (Town) at a  
5 later date.

6 V

7 The site of the proposal is located on a bluff of which a portion of the property is  
8 within the state shoreline. Front Street borders the northern edge of the property and leads to  
9 the Port of Friday Harbor's (Port) Marina and public parking lot.

10 Many of the Port's parking stalls are presently leased. The Port's marina has  
11 approximately four hundred (400) leased marina spaces and between one to two hundred guest  
12 mooring spaces

13 Across Front Street from the proposal is a public park on the water.

14 West Street lies easterly of the site and leads down town.

15 A vacant lot which is owned by Union Oil and is believed to be contaminated with  
16 petroleum products is located westerly.

17 VI

18 Adjacent to the site, in a southern direction, toward the Town is Raven House, a real  
19 estate office; the Whale Museum and Cafe Bissett. Immediately south of these structures is  
20 First Street and a public sidewalk that provides the public with a partial view of the water  
21 looking between the buildings

22 VII

23 When the original application was submitted, the Town of Friday Harbor  
24 Administrator, King Fitch, expressed concerns whether the proposed project was consistent  
25 with the area; that it would not be over the twenty-seven feet elevation required by the Zoning

1 Ordinance; adequate view corridors; adequate parking spaces and shoreline access. Therefore,  
2 between the April, 1991 application and the final issuance of the permit, Grainger met with  
3 "Town Officials" to discuss these issues and to find out if there were other concerns.  
4

#### 5 VIII

6 Grainger testified that there had been concerns and discussions about a proposed Loop  
7 Road in the area that was to connect Front Street with West Street to assist in relieving traffic  
8 congestion. There was talk that it was to be constructed on the site behind the former  
9 Gollywobbler Restaurant, and some of the townspeople were concerned that it would never be  
10 built if the proposed project was completed.

#### 11 IX

12 Grainger tried to work with the Town in a property trade to swap footage on the  
13 backside of his property or southerly side for the Town's right-of-way off Front Street. This  
14 would allow them to move the project forward and also allow space in the back for a future  
15 street. However, this would put the project too high in elevation and therefore, the trade was  
16 not accomplished.

#### 17 X

18 The applicant met with Town officials to attempt to meet their concerns by modifying  
19 the original proposal.

#### 20 XI

21 On April 10, 1992, after the applicant modified his original proposal substantially, the  
22 Town approved a Shoreline Substantial Development Permit with numerous conditions. The  
23 permit was for the construction of a two story, twenty-seven (27) foot high, sixteen thousand,  
24 four-hundred, sixty-three (16,463) square foot, sixteen (16) unit transient lodging facility and  
25 restaurant per approved revised plans, dated April 10, 1992.

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2 XII

3 The proposal covers most of the vacant site, with the closest setbacks from property  
4 lines as follows:

5 Union Oil property, one foot

6 Mercer property (Raven House), six inches

7 Whale Museum, five feet

8 West Street, six inches

9 XIII

10 This permitted proposal is designed to reduce the impact of the building on the existing  
11 skyline by using dormers with appropriate colors and single roof form; the main floor to be a  
12 shingle exterior; and climbing plants to be planted along the foundation walls.

13 XIV

14 The approved project also included a proposed pedestrian structure within the West  
15 Street right-of-way which would provide public access from First Street via a scenic viewpoint  
16 down the bluff by way of steps to Front Street, which could be crossed to access the public  
17 Waterfront Park. However, the trail has no handicap access, and it calls for many steps down  
18 the bluff.

19 XV

20 The approved parking plan consists of twenty-two (22) spaces, fourteen (14) on site and  
21 eight (8) off site.

22 XVI

23 Access to the project is via West Street.

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2 XVII

3 It is the above Shoreline Substantial Development Permit that was appealed to the  
4 Board by the Port and Lynne Mercer on May 12, 1992. These appeals became SHB 92-20 and  
5 SHB 92-21 and were consolidated for the hearing on the merits.

6 XVIII

7 The Port's primary contention is that the permit should be overturned and denied  
8 because the Town failed to recognize a condition that it placed on a March, 1981 shoreline  
9 permit issued to the port to expand its marina.

10 The 1981 condition required that the Port be responsible to work with the Town in  
11 acquisition and construction of streets from the Port parking area as shown on the "Town  
12 Traffic Study Report"

13 XIX

14 In testimony provided to the Board, the Port contends that there have been on-going  
15 negotiations between the Town and Port over the years to improve the access and traffic  
16 patterns in the area of the marina and Front Street. These negotiations centered around a  
17 proposed "Loop Road" across the Gollywobbler site. The Loop Road was to be a joint effort  
18 by the Port and Town to purchase right-of-way and construct the road.

19 XX

20 The "Loop Road" has been on the Town's Annual Six Year Transportation  
21 Improvement Program since the Town's January 1981 Traffic Study Report.

22 XXI

23 The "Loop Road" right-of-way has never been acquired, and therefore, the road has  
24 never been completed.

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2 XXII

3 Lynne Mercer appealed the approval of the permit on the basis that the proposed  
4 project would block views from existing upland developments including Raven house, a real  
5 estate office owned by Mercer and others The Raven House view of the water would be  
6 completely obscured.

7 She also contends that present parking spaces are "over taxed", and that the new facility  
8 would add to the congestion of traffic in the area, as well as compound the parking problems.

9 XXIII

10 Raven House is a small one story building located off First Street, sitting directly  
11 behind the proposed project on a lot adjacent to and south of the site.

12 XXIV

13 The present view from Raven House overlooks the property in question and the  
14 waterfront in Friday Harbor which includes a view of the water, a boat basin and ferries  
15 coming and going from the Harbor

16 XXV

17 The proposed project also partially blocks other upland views, including the present  
18 public view from the sidewalk on First Street between the Whale Museum and Raven House

19 XXVI

20 Testimony was provided to the Board that the applicants presented an alternative plan  
21 during a settlement conference, which included the same number of units, but the structure  
22 was redesigned to the maximum height being higher than the approved twenty-seven (27) feet.  
23 Both appellants said they could live with this alternative, but there was testimony that the  
24 Town Council would not be likely to approve a project which was higher than the local zoning

1 ordinance permitted. However, the alternative plan would be within the thirty-five (35) feet  
2 allowed in RCW 90 58.320 and the Friday Harbor Shoreline Master Program (FHSMP) under  
3 Section 6 02(C)(3).  
4

#### 5 XXVII

6 The following issues are to be considered: 1) parking, 2) public access, 3) proposed  
7 Loop Road, and 4) view.

#### 8 XXVII

9 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.  
10 From these Findings of Fact, the Board issues these:

### 11 CONCLUSIONS OF LAW

#### 12 I

13 The Board has jurisdiction over this appeal. RCW 90.58 180.

#### 14 II

15 The proposed project is located within an Urban designation and is on a Shoreline of  
16 the state.

#### 17 III

18 The condition imposed upon the Port to construct the proposed Loop Road in 1981 is  
19 not a legitimate reason to deny this permit. While the proposed road would traverse  
20 applicant's property, neither the City nor the Port has ever acquired a right-of-way from the  
21 applicant to construct the road. Whether the Town or the Port is delinquent in failing to  
22 satisfy the condition in this 1981 permit is beside the point. The Port cannot rely on this  
23 controversy, as the property in question has not been purchased by either the City or Port  
24 Therefore, the property owner is entitled to develop all of its property without regard to the  
25 Loop road condition.

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2 IV

3 The FHSMP protects against degradation of shoreline and water views. However, it  
4 does allow for view corridors to be designated in the process of approving developments. Sec.  
5 6.02, C(1), (2) and 6.02 B (3).

6 In approving this development, the Town of Friday Harbor enhanced a public view  
7 area by requiring construction of the staircase and viewpoint in the West Street area.  
8 However, the Board finds that the total project does obstruct and significantly reduces the  
9 aesthetic quality of current views of the water from private and public properties.

10 V

11 The Board has consistently held that aesthetics is an appropriate basis upon which to  
12 test a permit against the consistency requirements of the Act. Sato Corp. v. City of Olympia,  
13 SHB No. 81-41 (June 17, 1992); Department of Ecology and Attorney General v. Mason  
14 County and Hama Hama Co., SHB No 115 (July 2, 1976).

15 This is consistent with the interpretation taken by the Washington Appellate Courts.  
16 Ecology v Pacesetter Constr., 89 Wn.2d 203, 211-12, 571 P.2d 196 (1977); Hunt v  
17 Anderson, 30 Wn App. 437, 440-41, 635 P.2d 156 (1981). In Pacesetter, the Supreme Court  
18 acknowledged that the Shoreline Management Act contained express policies to protect  
19 aesthetics, as follows:

20 Moreover, the legislature has given expression to this state's public policy of  
21 supporting protection of aesthetic values by the enactment of SMA and similar  
22 statutes. See RCW 90 58, including RCW 90.58.020 and .320 . . .

23 Pacesetter, at 89 Wn.2d 212.

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VI

RCW 90.58.320 places a maximum 35 height limitation on structures which will obstruct a substantial number of residential views. This limitation is not, however, to be regarded as the maximum view protection afforded under the Act.

VII

RCW 90 58.020 directs, in relevant part, as follows

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.

The shoreline areas, particularly water areas, including biological wetlands, and the interface between the water and land tend to be natural in character. Views of such areas are especially protected under the Act.

VIII

For this reason, master programs generally contain setback and height restrictions on shoreline structures and developments which are specific in nature and often more restrictive than the 35 foot height requirement of RCW 90.58.320. These master programs, which are approved by the Department of Ecology ("Ecology"), are state regulations.

IX

FHSMP contains strong protections for both public and private views of the shorelines. These provisions were enacted by the Town legislative body and approved by Ecology. They are consistent with the Act, particularly the Act's mandate is to be liberally construed on behalf of its purposes. RCW 90.58.900.

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2 X

3 The alternative plan (Fact XXVI) that was presented to appellants for settlement  
4 purposes appears to satisfy appellants' objections, as the upland views will be less significantly  
5 blocked. The FHSMP 6.02(c)(2) and (3) View Protection, General Regulations states:

6 (2) All uses and developments within the shoreline or over water  
7 shall be designed and located to minimize obstruction or  
8 degradation of shoreline and water views from existing upland  
9 development and from public roads and walkways.  
Developments which will obstruct or significantly reduce the  
aesthetic quality of these views shall not be permitted.

10 (3) . . . all structures shall be limited to 35 feet in height  
11 pursuant to WAC 173-14-030(4) and RCW 90.58.320.

12 However, the alternative plan is not before us, nor has it been approved  
13 by the Town.

14 XI

15 The FHSMP Section 6.08(4) Commercial Development Policy states:

16 New and expanded commercial developments should be designed  
17 and located to protect and enhance public views of the water from  
upland properties and from public roads and walkways.

18 The Board finds that the approved project does block public views of the water from  
19 the sidewalk on First Street and from upland properties, as the project as approved occupies  
20 most of the lot. Therefore, the approval of the Shoreline Substantial development permit  
21 should be reversed.

22 XII

23 In view of the Board's conclusion herein, concerning non-conformance of the proposed  
24 project as to the view protection provision of the FHSMP, it is unnecessary to discuss  
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1 Appellant Mercer's contentions concerning parking and public access. However, the Board  
2 has carefully reviewed the parking and access provisions and finds that these issues lack merit.  
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4 XIII

5 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such  
6 From the foregoing, the Board issues this:  
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**ORDER**

Approval of the the shoreline substantial development permit issued by the Town of Friday Harbor to Friday Harbor House Partnership for the proposed project is REVERSED.

DONE this 11th day of February, 1993.

**SHORELINES HEARINGS BOARD**

Annette S. McGee  
ANNETTE S. MCGEE, Presiding

Robert V. Jensen, Esq.  
HAROLD S. ZIMMERMAN, Chairman

Robert V. Jensen  
ROBERT V. JENSEN, Attorney Member

Nancy Burnett  
NANCY BURNETT, Member

Gordon F. Crandall, (a mc)  
GORDON F. CRANDALL, Member

S92-20F